

Farm Worker Exposure to Pesticides
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The U.S. Bureau of Labor Statistics has found that agricultural workers suffer from the highest rate of chemically related illness of any occupational group.² Pesticides can injure field workers through direct spray, drift, or the residue left by pesticides. Workers who mix, load, and apply pesticides suffer illnesses from spills, splashes, or inadequate protective equipment.

The U.S. Environmental Protection Agency (EPA) estimates that nationally farm workers suffer at least tens of thousands, and as many as 300,000, acute illnesses each year as a result of pesticide exposure.³ Washington State workers' compensation data for the period of 1987-1990 showed that the percentage of workplace illnesses from systemic poisoning was 3.2 times higher for farm workers than for workers in all industries, and percentage of illness from toxic disease was 2.2 times the norm.⁴

Washington farm workers filed 167 workers' compensation claims for pesticide-related illnesses in 1997.⁵ But reported claims do not reflect the true scope of the problem. Underreporting of pesticide illness among agricultural workers is a serious problem because both farm workers and medical professionals have difficulty in

¹ Columbia Legal Services has represented numerous low-income farm workers who have had legal problems related to pesticide exposure. CLS assists workers with filing occupational health and safety complaints with the Department of Labor and Industries and the Department of Agriculture, in filing claims for worker's compensation, and in bringing claims that they suffered retaliation because they asserted their legal rights to protection from pesticides. CLS has also represented farm workers seeking to achieve regulatory protection from pesticides under the laws of this state.

² U.S. Bureau of Labor statistics, 52 Fed. Reg. 16,050, 16,059 (1987).

³ General Accounting Office, Hired Farmworkers: Health and Well-Being at Risk, at 13 (1992); Environmental Protection Agency, Summary of Risk-Benefit Analysis for Worker Protection Standard, 57 Fed. Reg. 38105 (1992).

⁴ Department of Labor and Industries, Farm Worker Health and Safety in Washington: A Look at Workers' Compensation Data, at 11 (1991).

⁵ Washington State Department of Health, Pesticide Incident Reporting and Tracking Review Panel: 1998 Report, at 8 (1999).

identifying pesticide-related illness.⁶ In addition, underreporting occurs because farm workers lack access to health care, may be unable to take time away from work to see a doctor, and may fear reprisal from employers if they report the illness.⁷ One study of 47 Washington farm workers who indicated past health problems from pesticide exposure found that only two of those workers filed for workers' compensation.⁸

Children of farmers and agricultural field workers are likely to have a high potential for pesticide exposure, even if they are not directly involved in farm activities related to exposure. Pesticide exposure can occur from a number of sources such as contaminated soil, dust, work clothing, water, and food, or through drift. Young children spend a large portion of their time on the floor or ground and can easily come in direct contact with yard soil or dust by putting hands and objects in their mouths frequently and thereby ingesting soil or dust.⁹

Exposure to some pesticides, even in small doses, can immediately cause severe effects. Initial symptoms may include rashes, vomiting, excessive sweating, dizziness, headaches, muscle pains and cramps, eye irritation, and respiratory difficulty.¹⁰ Other acute effects may include blindness, severe burns, and death.¹¹ Acute organophosphate poisoning can also cause long-term effects, including (1) a dying back of nerves resulting in a loss of motor function, paralysis, and muscle atrophy; (2) loss of intellectual functioning including impaired concentration, information processing, psychomotor speed, memory, and language; and (3) neurobehavioral effects including anxiety, irritability, and depression.¹² In addition to the immediate danger of acute poisoning, many pesticides have been epidemiologically linked to long-term effects, such as cancer, birth defects, and damage to the kidneys, liver, and nervous system.¹³

⁶ General Accounting Office, Pesticides on Farms: Limited Capability Exists to Monitor Occupational Illnesses and Injuries at 9, 15 (1993).

⁷ Id.

⁸ K. Gerstle, Symptoms Related to Pesticide Exposure Among Farmworkers in the Skagit Valley (1989).

⁹ Simcox NJ, Fenske RA, Wolz SA, Lee I, Kalman DA, "Pesticides in Household Dust and Soil: Exposure Pathways for Children of Agricultural Families." *Environ. Health Perspect.* 103:1126-1134 at 1126 (1995).

¹⁰ U.S. Environmental Protection Agency, Protect Yourself From Pesticides - Guide for Agricultural Workers, at 20-23 (1993); General Accounting Office supra note 3, at 12.

¹¹ See 40 CFR § 156.10.

¹² Rios v. Department of Labor & Industries, 103 Wn.App. 126, 5 P.3d 19, 21 (2000).

¹³ U.S. Environmental Protection Agency, supra note 10, at 24; General Accounting

Pesticides are widely used in the agriculture industry in Washington and the rest of the United States. According to the U.S. Department of Agriculture, over 8 1/2 million pounds of pesticides were applied to six major fruit crops in Washington in 1995.¹⁴ Of that amount, approximately 540,000 pounds was azinphos-methyl, a highly toxic organophosphate insecticide.¹⁵ Other highly toxic pesticides are routinely applied on labor-intensive Washington crops.¹⁶

The treatment of farm workers under state and federal health and safety laws raises numerous legal and policy issues. These include:

1. A lower federal standard for farm worker protection. The Food Quality Protection Act (FQPA) provides a health-based “reasonable certainty of no harm” standard of protection for consumers, 21 U.S.C. § 408(B)(2)(A); but the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) uses a cost-benefit standard for occupational protection, 7 U.S.C. §136a (c)(5)(C).
2. State regulatory protection. The Washington Industrial Safety and Health Act (WISHA) requires the Department of Labor and Industries (L&I) to adopt rules for workplace exposure to toxic chemicals which most adequately assure, to the extent feasible, “that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.” RCW 49.17.050(4); Aviation West Corp. v. Department of Labor and Industries, 138 Wn.2d 413, 431-32, 980 P.2d 701 (1999). But L&I has taken the position that it has no mandatory rulemaking obligation under this statute. Rios v. Department of Labor & Industries, 103 Wn. App. at 139.
3. Workers’ compensation. In 1994, L&I created a Chemically Related Illness Unit that subjects pesticide-related workers’ compensation claims and other claims involving chemical exposure to stricter review than that required for other workplace injuries. After this change, the rejection rate for pesticide-related claims increased from 6% in 1993 to 43% in 1997, the most recent year for

Office, supra note 3, at 12.

¹⁴ Apples, Cherries, Peaches, Pears, Raspberries, and Grapes. Source: Washington Agricultural Statistics Service, Washington Agricultural Chemical Usage: 1995 Fruit Crops (1996).

¹⁵ See M. O'Malley and M. Verder-Carlos, Illnesses Associated with Exposure to Azinphos Methyl in California, 1982-1990 (1994) (acute symptoms of exposure include vomiting and shortness of breath; azinphos methyl is also a suspected carcinogen).

¹⁶ For example, methyl parathion, chlorpyrifos, and carbaryl are commonly applied in Washington. See Washington Agricultural Statistics Service, supra at note 14.

which data are available.¹⁷ A review of a randomly selected sample of the pesticide claims that had been rejected by L&I revealed that Department of Health investigations of these same illness had determined that 57% of them were probably or definitely related to pesticide exposure.¹⁸ (The legal standard for acceptance of a workers' compensation claim is that the injury or illness must be "more probably than not" related to employment.) L&I's 1999 study of the rejection rate for pesticide claims acknowledged that the level of scrutiny applied to these claims was "probably overzealous" given the fact that most of them involved relatively minor amounts of compensation and employers confirmed the exposure events for over one-third of the claims.¹⁹ It remains to be seen whether the rejection rate for pesticide claims will significantly change as a result of the L&I review.

4. Retaliation. Workers have statutory protection against retaliation for filing workers' compensation claims, RCW 51.48.025, or health and safety complaints, RCW 49.17.160. But these laws against retaliation are rarely enforced for farm workers. Thus workers fear reprisal from their employers if they report illness from pesticides. General Accounting Office, supra note 6 at 9, 15.
5. Enforcement of pesticide protections. When workers have made complaints of employer violations of pesticide safety rules, they have found that the agencies consistently a) failed to respond in a timely manner; b) failed to interview the complainant even though they interviewed management representatives; c) failed to review medical records; and d) failed to take samples of clothing and field residue to verify exposure. While the agencies have agreed to improve their practices, it remains to be seen whether workers will see significant and lasting improvements. Columbia Legal Services, Enforcement of Farm Worker Pesticide Protection in Washington State (1998).
6. Discriminatory impact on workers of Hispanic descent. Washington's Pesticide Incident Reporting and Tracking Review Panel found that 73% of the definite, probable, or possible agricultural pesticide illnesses reported in 1995 involved workers of Hispanic descent. Washington State Department of Health, 1996 PIRT Report at 3 (1997). The treatment of farm workers raises the question of whether state policies and practices have a disparate impact on persons of Hispanic origin, in violation of regulations adopted under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d and 2000d-1; 29 C.F.R. 31.3(b)(2).

¹⁷ Memorandum from Vicki Skeers, Occupational Nurse Consultant, Department of Labor & Industries, to Pesticide Incident Reporting and Tracking Review Panel, November 30, 1999.

¹⁸ Id.

¹⁹ Id.